REMARKS

In response to the Office Action mailed August 23, 2005, Examiner rejected claims 1-6, 22, 23 and 24 under 35 U.S.C. 101 for statutory double patenting over the same claim numbers in United States Patent No. 6,601,483.

In response to the statutory double patenting rejection, Examiner is respectfully asked to note that the claims in the present application are of different scope than the cited claims in the cited '483 patent. In particular, claim 1 in the present application, from which claims 2-6, 22-24 depend, claims a bit changing arm which is not limited to being coupled to the core. That is, in the present application, the magnetic bit changing arm of claim 1, line 8, is not coupled to the core, but still is movable toward one of the bit storage cavities/spaces ("cavities" in the language of the '483 patent, "spaces" in the corresponding language in the present application). Such a bit changing arm would not literally infringe claim 1 of the '483 patent which recites that the bit changing arm be coupled to the core (see line 35 in column 10), but would infringe claim 1 of the present application. Further, a "means for magnetically attracting" as now found in claim 1, for example in line 16, as amended in the present application, if it was something other than a magnet on a push rod would not literally infringe claim 1 of the '483 patent which in lines 45, 64 and 67 recites a "push rod magnet", but would infringe claim 1 of the present application.

Applying the "cross-readability test' of In re Vogel, 422 F. 2d 438, 164 USPQ 619 (CCPA 1970), a test which has been re-affirmed by the Federal Circuit, to see "whether one of the claims could be literally infringed without literally infringing the other", the test fails. The bit changing arms which are not coupled to the core would not literally infringe claim 1 of the '483 patent, but would literally infringe claim 1 in the present application. Similarly, a means for magnetically attracting (that is, a "magnet means" to use the phrase as filed) which is not literally a push rod magnet, would not literally infringe claim 1 of the '483 patent, but would literally infringe claim 1 of the present application. Thus the cited claims of the '483 patent and the rejected claims of the present application do not define identically the same invention. According then to the cross-readability test, statutory double patenting does not exist.

Consequently, it is submitted that the statutory double patenting rejection of claims 1-6, 22-24, under 35 U.S.C. 101 is improper.

In response to the non-statutory double patenting rejection of claims 7-18, 20, 21, 49-74, a terminal disclaimer is enclosed which disclaims the portion of the term of any patent which may issue from this application beyond the expiry of the term of the '483 patent.

In response to the objection under 35 U.S.C. 112, sixth paragraph, in order to more clearly recite the claim element "magnet means" as a means for performing a specified function, claims 1, 3, 49, 73 and 74 have been amended to delete "magnet means" and to substitute "means for magnetically attracting". Claim 49 has also been amended to insert, starting in line 20 of that claim, a copy of sub-paragraph 1. (h)(iii)(3) from claim 1, which starts in line 30 of claim 1. The sub-paragraph was inadvertently omitted in claim 49 as filed. No new subject matter has been added.

The paragraphs beginning at lines 11 and 27 on page 2 of the specification have been amended to replace the "magnet means" with "means for magnetically attracting" so as to be consistent in the claims as amended.

In the Drawings

In compliance with 37 CFR 1.121(d), applicant submits a complete set of replacement drawings of improved quality.

Examiner is respectfully requested to now pass this application to allowance.

Respectfully submitted,
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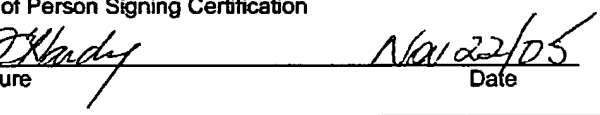
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